

Senate File 353 - Introduced

SENATE FILE _____
BY McCOY

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating a religious freedom and civil marriage protection
2 Act, providing a repeal, and providing effective dates.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 2249XS 83
5 pf/rj/5

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1 1 Section 1. NEW SECTION. 595A.1 TITLE.
1 2 This chapter shall be known and may be cited as the
1 3 "Religious Freedom and Civil Marriage Protection Act".
1 4 Sec. 2. NEW SECTION. 595A.2 PURPOSE.
1 5 The purpose of this chapter is to promote legal equality in
1 6 the civil marriage laws and to protect the religious freedom
1 7 of those authorized to solemnize civil marriages.
1 8 Sec. 3. NEW SECTION. 595A.3 DEFINITIONS AND TERMS.
1 9 1. As used in this chapter, unless the context otherwise
1 10 requires:
1 11 a. "Book" or "record" kept by the county auditor,
1 12 assessor, treasurer, recorder, sheriff, or other county
1 13 officer means the county system as defined in section 445.1.
1 14 b. "Marriage" means civil marriage, a state-conferred
1 15 legal status constituting a civil contract requiring the
1 16 consent of two people capable of entering into the contract,
1 17 unless otherwise provided under this chapter, the existence of
1 18 which results in the bestowing of rights, benefits, and
1 19 responsibilities incident to that state-conferred legal
1 20 status.
1 21 2. Gender-specific terms relating to the marital
1 22 relationship or familial relationships, including but not
1 23 limited to "spouse", "family", "marriage", "immediate family",
1 24 "dependent", "next of kin", "bride", "groom", "husband",
1 25 "wife", "widow", and "widower", which are necessary to
1 26 implement the rights, benefits, and responsibilities of
1 27 spouses shall be construed to be gender neutral for all
1 28 purposes throughout the law, whether in the context of
1 29 statute, administrative or court rule, policy, common law, or
1 30 any other source of civil law.
1 31 Sec. 4. NEW SECTION. 595A.4 AGE REQUIREMENTS.
1 32 1. Two unmarried persons eighteen years of age or older
1 33 who are not otherwise disqualified to marry under any other
1 34 provision of this chapter may consent to and enter into a
1 35 civil marriage.
2 1 2. Notwithstanding the age requirement of subsection 1, if
2 2 either party to a marriage falsely represents the party's self
2 3 to be eighteen years of age or older at or before the time the
2 4 marriage is solemnized, the marriage is valid unless the
2 5 person who falsely represented the person's age chooses to
2 6 void the marriage by making the person's true age known and
2 7 verified by a birth certificate or other legal evidence of age
2 8 in an annulment proceeding initiated at any time before the
2 9 person reaches the age of eighteen. A child born of a
2 10 marriage voided under this subsection is legitimate.
2 11 3. a. Notwithstanding the age requirement of subsection
2 12 1, a civil marriage license may be issued to parties either or
2 13 both of whom are sixteen or seventeen years of age if both of
2 14 the following conditions are met:
2 15 (1) The parents of the underage party or parties certify
2 16 in writing that the parents consent to the marriage. If one
2 17 of the parents of any underage party to a proposed marriage is
2 18 dead or incompetent the certificate may be executed by the

2 19 other parent, if both parents are dead or incompetent the
2 20 guardian of the underage party may execute the certificate,
2 21 and if the parents are divorced the parent having legal
2 22 custody may execute the certificate.

2 23 (2) The certificate of consent of the parents, parent, or
2 24 guardian is approved by a judge of the district court or, if
2 25 both parents of any underage party to a proposed marriage are
2 26 dead, incompetent, or cannot be located and the party has no
2 27 guardian, the proposed marriage is approved by a judge of the
2 28 district court. A judge shall grant approval under this
2 29 subsection only if the judge finds the underage party or
2 30 parties capable of assuming the responsibilities of marriage
2 31 and that the marriage will serve the best interest of the
2 32 underage party or parties. Pregnancy alone does not establish
2 33 that the proposed marriage is in the best interest of the
2 34 underage party or parties. If a pregnancy is involved the
2 35 court records which pertain to the fact of the pregnancy shall
3 1 be sealed and available only to the parties to the marriage or
3 2 proposed marriage or to any interested party securing an order
3 3 of the court.

3 4 b. If a parent or guardian withholds consent, the judge
3 5 upon application of a party to a proposed marriage shall
3 6 determine if the consent has been unreasonably withheld. If
3 7 the judge finds that the consent has been unreasonably
3 8 withheld, the judge shall proceed to review the application
3 9 under paragraph "a", subparagraph (2).

3 10 Sec. 5. NEW SECTION. 595A.5 CIVIL MARRIAGE LICENSE.

3 11 1. Before a marriage is solemnized, a civil marriage
3 12 license for that purpose must be obtained from the county
3 13 registrar.

3 14 2. The license shall not be granted under any of the
3 15 following circumstances:

3 16 a. If either party is under the age necessary to
3 17 constitute a valid marriage.

3 18 b. If either party is under eighteen years of age, unless
3 19 the marriage is approved by a judge of the district court as
3 20 provided by section 595A.4.

3 21 c. If either party is disqualified from entering into a
3 22 civil contract.

3 23 d. If the parties are within the degrees of consanguinity
3 24 or affinity in which marriages are prohibited by law.

3 25 e. If either party is a ward under a guardianship and the
3 26 court has found that the ward lacks the capacity to contract a
3 27 valid marriage.

3 28 Sec. 6. NEW SECTION. 595A.6 APPLICATION FOR A CIVIL
3 29 MARRIAGE LICENSE == WAITING PERIOD AND EXCEPTION ==
3 30 SOLEMNIZATION WITHOUT A LICENSE AND PENALTY.

3 31 1. Before the issuance of any civil marriage license, the
3 32 parties to the marriage shall sign and file a verified
3 33 application with the county registrar. The application may be
3 34 mailed to the parties at their request or may be signed by
3 35 them at the office of the county registrar in the county in
4 1 which the license is to be issued.

4 2 2. The application form shall require each applicant to
4 3 provide the applicant's social security number and shall
4 4 require at least one affidavit of a competent and
4 5 disinterested person stating the facts as to age and
4 6 qualification of the parties.

4 7 3. Upon the filing of the application for a civil marriage
4 8 license, the county registrar shall file the application in a
4 9 record kept for that purpose and shall take all necessary
4 10 steps to ensure the confidentiality of the social security
4 11 number of each applicant.

4 12 4. All information included on an application may be
4 13 provided as mutually agreed upon by the division of records
4 14 and statistics and the child support recovery unit, including
4 15 by automated exchange.

4 16 5. Upon receipt of a verified application, the county
4 17 registrar may issue the license which shall not become valid
4 18 until the expiration of three days after the date of issuance
4 19 of the license. If the license has not been issued within six
4 20 months from the date of the application, the application is
4 21 void.

4 22 6. A civil marriage license may be validated prior to the
4 23 expiration of three days from the date of issuance of the
4 24 license in cases of emergency or extraordinary circumstances.

4 25 a. An order authorizing the validation of a license prior
4 26 to the expiration of three days from the date of issuance of a
4 27 license may be granted by a judge of the district court under
4 28 conditions of emergency or extraordinary circumstances upon
4 29 application of the parties filed with the county registrar.

4 30 An order shall not be granted unless the parties have filed an
4 31 application for a civil marriage license in a county within
4 32 the judicial district.

4 33 b. An application for a validation order shall be
4 34 submitted on forms furnished by the county registrar at the
4 35 same time the parties submit an application for the civil
5 1 marriage license.

5 2 c. After examining the application for the civil marriage
5 3 license and issuing the license, the county registrar shall
5 4 refer the parties to a judge of the district court for action
5 5 on the application for a validation order.

5 6 d. The judge shall, if satisfied as to the existence of an
5 7 emergency or extraordinary circumstances, grant authorization
5 8 of a validation order.

5 9 e. The county registrar shall validate a civil marriage
5 10 license upon presentation by the parties of the validation
5 11 order.

5 12 f. A fee of five dollars shall be paid to the county
5 13 registrar at the time the application for the validation order
5 14 is made. Such fee is in addition to the fee prescribed by law
5 15 for the issuance of a civil marriage license.

5 16 Sec. 7. NEW SECTION. 595A.7 ABUSE PREVENTION LANGUAGE.

5 17 In addition to any other information contained in an
5 18 application form for a civil marriage license and a marriage
5 19 license, the application form and license shall contain the
5 20 following statement in bold print:

5 21 "The laws of this state affirm your right to enter into
5 22 this marriage and at the same time to live within the marriage
5 23 under the full protection of the laws of this state with
5 24 regard to violence and abuse. Neither of you is the property
5 25 of the other. Assault, sexual abuse, and willful injury of a
5 26 spouse or other family member are violations of the laws of
5 27 this state and are punishable by the state."

5 28 Sec. 8. NEW SECTION. 595A.8 NAME CHANGE ADOPTED.

5 29 1. A party may indicate the adoption of a name change on
5 30 the application for a civil marriage license. The names used
5 31 on the marriage license shall become the legal names of the
5 32 parties to the marriage. The civil marriage license shall
5 33 contain a statement that when a name change is requested and
5 34 affixed to the marriage license, the new name is the legal
5 35 name of the requesting party.

6 1 2. An individual shall have only one legal name at any one
6 2 time.

6 3 Sec. 9. NEW SECTION. 595A.9 FILING AND RECORD REQUIRED.

6 4 The affidavit of a competent and disinterested person or a
6 5 certificate of consent to the marriage of a minor, in each
6 6 case as applicable, shall be filed by the county registrar and
6 7 constitute a part of the records of the registrar's office. A
6 8 memorandum of the affidavit or certificate shall also be
6 9 entered in the license book.

6 10 Sec. 10. NEW SECTION. 595A.10 PROVISION OF BLANK
6 11 CERTIFICATE OF MARRIAGE WITH LICENSE.

6 12 When a civil marriage license is issued, the county
6 13 registrar shall provide the applicant with a blank certificate
6 14 of marriage and instructions relative to ensure the return of
6 15 a complete and accurate certificate of marriage.

6 16 Sec. 11. NEW SECTION. 595A.11 SOLEMNIZATION OF CIVIL

6 17 MARRIAGE == FREE EXERCISE OF RELIGION PROTECTED ==

6 18 NONSTATUTORY SOLEMNIZATION.

6 19 1. A marriage may be solemnized by any of the following:

6 20 a. A judge of the supreme court, court of appeals, or
6 21 district court, including a district associate judge,
6 22 associate juvenile judge, or senior judge as defined in
6 23 section 602.9202, subsection 3, or a judicial magistrate.

6 24 b. A person ordained or designated as a leader of the
6 25 party's religious faith.

6 26 2. A person ordained or designated as a leader of a
6 27 party's religious faith authorized to solemnize a civil
6 28 marriage shall not be required to solemnize any marriage in
6 29 violation of the right to free exercise of religion guaranteed
6 30 by the Constitution of the United States or the Constitution
6 31 of the State of Iowa.

6 32 3. a. A marriage solemnized with the consent of parties
6 33 in any manner other than that prescribed in this chapter, is
6 34 valid, but the parties, and all persons aiding or abetting
6 35 them, shall pay fifty dollars each to the treasurer of state
7 1 for deposit in the general fund of the state.

7 2 b. Paragraph "a" shall not apply to the person solemnizing
7 3 the marriage, if within fifteen days after the solemnization,
7 4 the person returns the completed certificate of marriage to
7 5 the county registrar.

7 6 Sec. 12. NEW SECTION. 595A.12 FEE AND EXPENSES.
7 7 1. a. A person authorized to solemnize a marriage under
7 8 section 595A.11, subsection 1, paragraph "a", shall not charge
7 9 a fee for solemnizing a marriage during regular judicial
7 10 working hours, but may do any of the following:
7 11 (1) Charge a reasonable fee for officiating and returning
7 12 the completed certificate of marriage for each marriage
7 13 solemnized at a time other than regular judicial working
7 14 hours.
7 15 (2) In addition to any fee charged pursuant to
7 16 subparagraph (1), charge the parties to the marriage for
7 17 expenses incurred in solemnizing the marriage.
7 18 b. The supreme court shall adopt rules prescribing the
7 19 maximum fee and expenses that may be charged by a person under
7 20 this subsection.
7 21 2. A person authorized to solemnize a marriage under
7 22 section 595A.11, subsection 1, paragraph "b", may charge a
7 23 reasonable fee for each marriage solemnization and for
7 24 returning the completed certificate of marriage in an amount
7 25 agreed to by the person and the parties to the marriage.
7 26 Sec. 13. NEW SECTION. 595A.13 CERTIFICATE OF MARRIAGE ==
7 27 RETURN.
7 28 1. a. After the marriage has been solemnized, the person
7 29 who solemnized the marriage shall attest to the marriage on
7 30 the blank certificate of marriage provided for that purpose
7 31 and return the completed certificate of marriage within
7 32 fifteen days to the county registrar who issued the marriage
7 33 license.
7 34 b. If the certificate of marriage returned to the county
7 35 registrar is not complete as required by the forms specified
8 1 in section 144.12, the county registrar shall require the
8 2 person returning the certificate of marriage to supply the
8 3 omitted information.
8 4 2. When a marriage is entered into without the services of
8 5 a person authorized to solemnize a marriage under section
8 6 595A.11, the required return of the completed certificate of
8 7 marriage may be made to the county registrar by either spouse.
8 8 Sec. 14. NEW SECTION. 595A.14 ISSUANCE OF CERTIFIED COPY
8 9 OF CERTIFICATE OF MARRIAGE.
8 10 Following receipt of the completed original certificate of
8 11 marriage pursuant to section 144.36, the county registrar
8 12 shall issue a certified copy of the original certificate of
8 13 marriage to the parties to the marriage.
8 14 Sec. 15. NEW SECTION. 595A.15 EXCEPTIONS.
8 15 The provisions of this chapter, relating to procuring a
8 16 license and to the solemnizing of a marriage are not
8 17 applicable to members of religious or cultural communities
8 18 having specific marriage customs, rites, or practices if the
8 19 marriage is solemnized in accordance with these customs,
8 20 rites, or practices.
8 21 Sec. 16. NEW SECTION. 598A.16 ISSUE LEGITIMIZED.
8 22 Children born outside of a marriage become legitimate by
8 23 the subsequent marriage of their parents. Children born of a
8 24 marriage contracted in violation of section 595A.5 or 595A.17
8 25 are legitimate.
8 26 Sec. 17. NEW SECTION. 595A.17 VOID CIVIL MARRIAGES.
8 27 1. A man shall not enter into a civil marriage involving
8 28 any of the following persons who are related by blood:
8 29 a. The man and his mother, grandmother, aunt, daughter,
8 30 sister, granddaughter, niece, or female first cousin.
8 31 b. The man and his father, grandfather, uncle, son,
8 32 brother, grandson, nephew, or male first cousin.
8 33 2. A woman shall not enter into a civil marriage involving
8 34 any of the following persons who are related by blood:
8 35 a. The woman and her father, grandfather, uncle, son,
9 1 brother, grandson, nephew, or male first cousin.
9 2 b. The woman and her mother, grandmother, aunt, daughter,
9 3 sister, granddaughter, niece, or female first cousin.
9 4 3. Marriages between persons either of whom has a spouse
9 5 living are void, but, if the parties live and cohabit together
9 6 after the death or divorce of the former spouse, the marriage
9 7 is valid.
9 8 Sec. 18. NEW SECTION. 595A.18 FOREIGN MARRIAGES ==
9 9 VALIDITY.
9 10 A marriage which is solemnized in any other state,
9 11 territory, country, or any foreign jurisdiction which is valid
9 12 in that state, territory, country, or other foreign
9 13 jurisdiction, is valid in this state.
9 14 Sec. 19. Section 144.36, Code 2009, is amended to read as
9 15 follows:
9 16 144.36 MARRIAGE CERTIFICATE FILED == PROHIBITED

9 17 INFORMATION.

9 18 1. A certificate recording each marriage performed in this
9 19 state shall be filed with the state registrar.

9 20 2. The county registrar shall prepare the certificate of
9 21 marriage on the form furnished by the state registrar based
9 22 upon the basis of information obtained from the parties to be
9 23 married, who shall attest to the information by their
9 24 signatures. ~~The county registrar in each county shall keep a~~
~~9 25 record book for marriages. The form of marriage record books~~
~~9 26 shall be uniform throughout the state. A properly indexed~~
~~9 27 permanent record of marriage certificates upon microfilm,~~
~~9 28 electronic computer, or data processing equipment may be kept~~
~~9 29 in lieu of marriage record books.~~

9 30 2- 3. Every person who ~~performs~~ solemnizes a marriage
9 31 shall certify the fact of marriage and return the certificate
9 32 of marriage to the county registrar within fifteen days after
9 33 the ~~ceremony~~ marriage is solemnized. The certificate shall be
9 34 signed by the witnesses to the ceremony solemnization and the
9 35 person performing the ceremony solemnizing the marriage.

10 1 3- 4. The certificate of marriage shall not contain
10 2 information concerning the race of the married persons,
10 3 previous marriages of the married persons, or the educational
10 4 level of the married persons.

10 5 5. The county registrar in each county shall keep a record
10 6 book for marriages. The form of marriage record books shall
10 7 be uniform throughout the state. A properly indexed permanent
10 8 record of certificates of marriage maintained on microfilm,
10 9 electronically, or on data processing equipment may be kept in
10 10 lieu of marriage record books.

10 11 4- 6. The county registrar shall record and forward to
10 12 the state registrar on or before the tenth day of each
10 13 calendar month the original certificates of marriages filed
10 14 with the county registrar during the preceding calendar month
10 15 and the fees collected by the county registrar on behalf of
10 16 the state for applications for a civil marriage license ~~to~~
~~10 17 marry~~ in accordance with section 331.605, subsection 7.

10 18 Sec. 20. Section 216.18A, Code 2009, is amended to read as
10 19 follows:

10 20 216.18A CONSTRUCTION OF CHAPTER == MARRIAGE.

10 21 This chapter shall ~~not~~ be construed to allow support the
10 22 civil marriage between two persons of the same sex, in
10 23 accordance with chapter ~~595~~ 595A.

10 24 Sec. 21. Section 331.605, subsection 7, Code 2009, is
10 25 amended to read as follows:

10 26 7. a. For filing an application for ~~the license to marry~~
10 27 a civil marriage license, thirty-five dollars, which includes
10 28 payment for one certified copy of the original certificate of
10 29 marriage, to be issued following filing of the original
10 30 certificate of marriage, four dollars of which shall be
10 31 retained by the county pursuant to subsection 6.

10 32 b. For issuing an application for an order of the district
10 33 court authorizing the validation of a civil marriage license
10 34 ~~to marry~~ before the expiration of three days from the date of
10 35 issuance of the license, five dollars. The district court
11 1 shall authorize the early validation of a civil marriage
11 2 license without the payment of any fees imposed in this
11 3 subsection upon showing that the applicant is unable to pay
11 4 the fees.

11 5 Sec. 22. Section 331.611, subsection 2, paragraph c, Code
11 6 2009, is amended to read as follows:

11 7 c. Issue and maintain marriage certificates as provided in
11 8 sections 144.36, 144.45, and 144.46, and chapter ~~595~~ 595A.

11 9 Sec. 23. Section 602.8103, subsection 3, Code 2009, is
11 10 amended to read as follows:

11 11 3. After the original record is reproduced and after
11 12 approval of a majority of the judges of the district court by
11 13 court order, destroy the original records including, but not
11 14 limited to, dockets, journals, scrapbooks, files, and civil
11 15 marriage license applications. The order shall state the
11 16 specific records which are to be destroyed. An original court
11 17 file shall not be destroyed until after the contents have been
11 18 reproduced. As used in this subsection and subsection 4,
11 19 "destroy" includes the transmission of the original records
11 20 which are of general historical interest to any recognized
11 21 historical society or association.

11 22 Sec. 24. Chapter 595, Code 2009, is repealed.

11 23 Sec. 25. CIVIL MARRIAGE ADVISORY COUNCIL == NECESSARY
11 24 CHANGES IN LAW AND PROCESS NECESSARY TO ENSURE THE RIGHTS AND
11 25 RESPONSIBILITIES OF SPOUSES.

11 26 1. The governor shall appoint a civil marriage advisory
11 27 council to make recommendations to implement and administer

11 28 provisions relating to civil marriage in this state in
11 29 accordance with chapter 595A, as enacted in this Act. The
11 30 advisory council shall include but is not limited to
11 31 representatives of the legal profession, the courts, business
11 32 and industry, labor, and citizens interested in entering into
11 33 civil marriages in this state.

11 34 2. The advisory council shall make recommendations to the
11 35 governor and the general assembly by September 1, 2009,
12 1 regarding all of the following:

12 2 a. Any conforming changes in the Code of Iowa necessitated
12 3 by the provisions relating to civil marriages in accordance
12 4 with chapter 595A, as enacted in this Act.

12 5 b. Any changes in state legal or other processes,
12 6 including but not limited to property rights, access to
12 7 courts, parentage, inheritance, health decisions, contract
12 8 rights, workplace benefits, insurance coverage, retirement
12 9 benefits, dissolution, and other areas as necessitated to
12 10 ensure that the parties to a civil marriage are provided with
12 11 all the rights and subject to all the responsibilities in
12 12 accordance with chapter 595A, as enacted in this Act.

12 13 Sec. 26. EFFECTIVE DATES.

12 14 1. The section of this Act relating to the establishment
12 15 of a civil marriage advisory council, being deemed of
12 16 immediate importance, takes effect upon enactment.

12 17 2. The remaining sections of this Act take effect July 1,
12 18 2010.

12 19 EXPLANATION

12 20 This bill creates a new Code chapter 595A, the "Religious
12 21 Freedom and Civil Marriage Protection Act". The purpose of
12 22 the bill is to promote legal equality in the civil marriage
12 23 laws and to protect the religious freedom of those authorized
12 24 to solemnize civil marriages.

12 25 The bill provides definitions for the new Code chapter.
12 26 The bill defines "marriage" as civil marriage which is a
12 27 state-conferred legal status constituting a civil contract
12 28 requiring the consent of two people capable of entering into
12 29 the contract, unless otherwise provided in the bill, the
12 30 existence of which results in the bestowing of rights,
12 31 benefits, and responsibilities incident to that
12 32 state-conferred legal status.

12 33 The bill also provides that gender-specific terms relating
12 34 to the marital relationship or familial relationships which
12 35 are necessary to implement the rights, benefits, and
13 1 responsibilities of spouses are to be construed to be gender
13 2 neutral for all purposes throughout the law, whether in the
13 3 context of statute, administrative or court rule, policy,
13 4 common law, or any other source of civil law.

13 5 The bill retains current marriage law provisions relating
13 6 to age requirements, application for a civil marriage license,
13 7 the waiting period and exceptions for a civil marriage
13 8 license, solemnization provisions, fees and expenses, and the
13 9 certificate of marriage.

13 10 In addition with regard to solemnization, the bill provides
13 11 that a person ordained or designated as a leader of a party's
13 12 religious faith authorized to solemnize a civil marriage shall
13 13 not be required to solemnize any marriage in violation of the
13 14 right to free exercise of religion guaranteed by the
13 15 Constitution of the United States or the Constitution of the
13 16 State of Iowa.

13 17 With regard to specifying void marriages, the bill provides
13 18 gender-neutral provisions relating to relationships between
13 19 persons who are related by blood that are void.

13 20 The bill provides that a marriage that is solemnized in any
13 21 other state, territory, country, or any foreign jurisdiction
13 22 which is valid in that state, territory, country, or other
13 23 foreign jurisdiction is valid in this state.

13 24 The bill makes other conforming changes throughout the
13 25 Code.

13 26 The bill directs the governor to appoint a civil marriage
13 27 advisory council to make recommendations by September 1, 2009,
13 28 for necessary changes in the law and legal and other processes
13 29 necessary to implement and administer the provisions related
13 30 to civil marriage pursuant to the new Code chapter 595A.

13 31 The provision relating to the civil marriage advisory
13 32 council takes effect upon enactment. The remaining provisions
13 33 of the bill take effect July 1, 2010.

13 34 LSB 2249XS 83

13 35 pf/rj/5